

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )

Amendment of Rules and )  
Policies Governing )  
Pole Attachments )

CS Docket No. 97-98

**INITIAL REGULATORY FLEXIBILITY ANALYSIS COMMENTS  
OF THE  
SMALL CABLE BUSINESS ASSOCIATION**

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The Small Cable Business Association ("SCBA") files these *Comments* to the *Initial Regulatory Flexibility Act Analysis*, CS Docket No. 97-98 (released March 14, 1997) ("*Notice*").

Formed nearly four years ago, SCBA today represents almost 300 small cable operators, most of whom have 1,000 or fewer subscribers. SCBA began as small operators banded together to cope with regulatory burdens imposed by the Cable Television Consumer Protection and Competition Act of 1992 ("*1992 Cable Act*"). Today, SCBA remains active in many Commission rulemakings, ensuring that the Commission understands the unique impact its regulations have on small cable and customers of small cable.

SCBA responds to the Commission's *Initial Regulatory Flexibility Act Analysis*. Although the Commission states that it "seeks to further minimize burdens of small entities in conformance with the *1996 Act*,"<sup>1</sup> it ignores certain negative impact of § 224 on small cable systems.

Before beginning the Initial Regulatory Flexibility Act Analysis, the Commission makes an incorrect declaration of critical importance. In paragraph 48 of the *Notice*, the

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<sup>1</sup> *Notice*, ¶ 78.

Commission first repeats the § 257 requirement for the elimination of "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services" and then states:

We believe that market entry barriers are minimized for small cable operators and telecommunications carriers by the application of § 224 which requires just, reasonable and nondiscriminatory rates.

Section 224 does not minimize market entry barriers for small cable. To the contrary, § 224(a) contains a critical exclusion from its coverage that directly and severely affects small cable. Section 224(a) extends its protections to all "utilities," which terms excludes "any person who is cooperatively organized. . . ."<sup>2</sup> The statute's exclusion of cooperatives from coverage adversely impacts small cable systems.

Because many small cable systems operate in rural areas, where aerial plant predominates, access to utility poles represents an essential element of providing cable service. Inability to access poles on economically feasible terms represents a significant barrier to entry. Small cable routinely attaches its cable plant to rural telephone and electric cooperatives. The terms and conditions imposed by rural cooperatives are exempt from federal oversight<sup>3</sup> and are not generally regulated by state utility commissions.

The *Initial Regulatory Flexibility Analysis* fails to take this significant issue into consideration. The Commission fails to articulate the concerns arising from this issue and fails to solicit comments proposing significant alternatives.

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<sup>2</sup> 47 U.S.C. § 224(a)(1).

<sup>3</sup> 47 U.S.C. § 224(a)(1).

Section 224 does not minimize small cable's market entry barriers. Rather, small cable and its subscribers unfairly bear the burden of the § 224 cooperative utility exclusion. SCBA requests that the Commission issue a comprehensive Final Regulatory Flexibility Act Analysis, including the thorough analysis of significant alternatives that would help limit the adverse impact on small cable.

Respectfully submitted:



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